IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2830 of 2005

Between:

1 Kalavathi, W/o Sailu, Municipal Council Ward No.29, Nizamabad Municipality, R/o Nizamabad, Nizamabad District.
2 G.Sujatha, W/o Satyanarayana, Municipal Councilor , Ward No.2, Nizamabad Municipality, R/o Nizamabad, Nizamabad District.
3 N.Srihari S/o Rupla Naik, Municipal Councilor, Ward No.10 Nizamabad Municipaly, R/o Nizamabad, Nizamabad District.

..... PETITIONERS

AND

1 Government of Andhra Pradesh, rep.by its Secretary, Municipal Administration and Urban Development (Elec.II) Department, Secretariat, Hyderabad.
2 Commissioner and Director of Municipal Administration, Andhra Pradesh , Hyderabad.
3 Nizamabad Municipality, rep.by its Commissioner, Nizamabad, Nizamabad District,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ of Mandamus or any other appropriate writ declaring that the action of the 1st respondent contained in G.O.Ms.No.57, Municipal Administration dt. 04/02/2005 purporting to cancel the resolution of the Municipal Council, Nizamabad bearing Resolution No.902 dt. 29/12/2004 in exercise of its power U/s 59 (1) of the AP. Municipalities Act, 1965 is arbitrary and without Jurisdiction and direct the 1st respondent to forbear from proceeding further from disturbing the existing Nizamabd Municipality or contemplating to constitute the same as larger urban area/corporation and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner : MR. V.VENKATARAMANA

Counsel for the Respondents : GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2830 OF 2005

ORDER :

The writ petitioners were elected as Municipal Councillors of the Nizamabad Municipality in the election held in the year 2000 from Ward Numbers 29, 2 and 10 respectively and the term of their office is valid upto 29-03-2005. The 1st respondent vide G.O.Ms.No.535, Municipal Administration, dated 20-12-2004 issued a notice to the Municipal Council, Nizambad Municipality under Section 3-A (1) (a) of the A.P. Municipalities Act, 1965 (for short, 'the Act') proposing to constitute Nizamabad Municipality as a Larger Urban Area and calling for the explanation / comments of the Municipal Council. In pursuance thereof, the Municipal Council, Nizamabad has passed Resolution No.902, dated 29-12-2004 to the effect that the proposal for upgrading the Nizamabad Municipality as Municipal Corporation is not aggreable and requesting the 1st respondent to drop the proposal. While so, the 1st respondent has issued the impugned G.O.Ms.No.57, dated 4-2-2005 stating that it has been provisionally decided to cancel the resolution of the Municipal Council, Nizamabad bearing No.902 dated 29-12-2004 under sub-Section (1) of Section 59 of the Act as the said resolution is against the public interest and therefore calling upon the Municipal Council, Nizamabad to explain within 15 days from the date of receipt of the notice as to why the said Resolution No.902 shall not be cancelled. The said notice dated 4-2-2005 is under challenge in this writ petition contending that the same is without jurisdiction and contrary to the mandatory provisions contained in Section 59(1) of the Act.

The learned Counsel for the petitioner contends that the Resolution passed by the Municipal Council, dated 29-12-2004 is in exercise of the democratic spirit and it can never be termed as contrary to the public interest and therefore the impugned notice purported to be in exercise of powers conferred under Section 59(1) of the Act is arbitrary and without jurisdiction. He also contends that having called for the opinion of the Municipal Council under Section 3-A of the Act, the 1st respondent ought to have considered the collective opinion expressed by the Municipal Council by way of resolution and ought to have taken a decision whether the said objections / opinion expressed by the Municipal Council are acceptable or not, but the action proposed under the impugned notice to cancel the said resolution itself is totally impermissible and nothing but fraud on the power under Section 3-A of the Act.

On the other hand, the learned Advocate General appearing for the respondents submits that the action proposed under the impugned notice is entirely different and distinct from the proceedings initiated under Section 3-A of the Act. He contends that it is well within the power of the 1st respondent to cancel any resolution passed by the Municipal Council when such resolution is against the public interest and the impugned show-cause notice was issued so as to afford an opportunity to the Municipal Council against the proposed action under Section 59(1) of the Act and since no decision as such has been taken as on today, the writ petition is premature and is liable to be dismissed in limine.

The law is well settled that a show-cause notice issued by an authority exercising the power under a Statute cannot be interfered unless the notice is shown to have been issued without jurisdiction. This Court while exercising jurisdiction under Article 226 of the Constitution of India would not ordinarily interfere at the stage of the show-cause notice inasmuch as the show-cause notice is nothing but affording an opportunity to the party concerned to explain the proposed action.

In the case on hand, it is not the case of the petitioners that the 1st respondent is not competent to initiate the proceedings under Section 59 of the Act, but the only contention raised is that since the power under Section 59 of the Act was sought to

be exercised to defeat the purpose of calling the opinion from the Municipal Council for the action proposed under Section 3-A of the Act, the impugned notice is impermissible and contrary to the provisions of the Act. Thus, according to the petitioners, the writ petition is maintainable notwithstanding the fact that the impugned notice is a show-cause notice. I do not find any substance in the said contention. A perusal of the impugned notice dated 4-2-2005 shows that it is nothing but a show-cause notice whereunder the Municipal Council was called upon to explain why the resolution in question shall not be cancelled under Section 59(1) of the Act. It is always open to the petitioner to submit the necessary explanation raising all the objections against the proposed action including the objection that the action proposed is not in accordance with the provisions of the Statute. Since absolutely no case is made out to show that the impugned notice is without jurisdiction, I am unable to agree that the writ petition at this stage can be maintained.

I am also unable to agree with the contention of the learned Counsel for the petitioners that the 1st respondent has already made up its mind to cancel the resolution in question. What has been stated in the penultimate paragraph of the impugned notice is only the provisional decision and the 1st respondent will take the final decision after considering the objections if any raised by the Municipal Council against the action proposed under Section 59(1) of the Act.

For the aforesaid reasons, I do not see any ground to hold that the impugned notice is without jurisdiction nor there is any reason to hold that the same is ex facie illegal. Hence, the interference of this Court at this stage is not warranted.

Accordingly, the Writ Petition is dismissed. However, it is made clear that in case the Municipal Council submits its explanation to the impugned show-cause notice, the objections raised, if any, shall be taken into consideration before any final decision is taken by the 1st respondent. No costs.

February, 2005.

gbs

To

1 The Secretary, Government of Andhra Pradesh, Municipal Administration and Urban Development (Elec.II) Department, Secretariat, Hyderabad.
2 Commissioner and Director of Municipal Administration, Andhra Pradesh , Hyderabad.
3 Nizamabad Municipality, rep.by its Commissioner, Nizamabad, Nizamabad District,

4. Two CCs to G.P. for Municipal Admn. & Urban Development, High Court of AP Bldgs, Hyderabad (OUT).

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